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## **VIA ELECTRONIC FILING**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

Attn: Wireline Competition Bureau

Re: **EX PARTE PRESENTATION**  
CC Docket No. 96-45  
Federal-State Joint Board on Universal Service  
TracFone Wireless, Inc.'s Petitions for Designation as an Eligible  
Telecommunications Carrier

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Dear Ms. Dortch:

Over two years ago, on June 8, 2004, TracFone Wireless, Inc. ("TracFone") filed a Petition for Forbearance pursuant to Section 10 of the Communications Act, as amended (47 U.S.C. § 160) (the "Act"), requesting the Commission to forbear from the statutory requirement in Section 214(e) of Act (47 U.S.C. § 214(e)) that an eligible telecommunications carrier ("ETC") offer service using its own facilities or a combination of its own facilities and resale of another carrier's services. Concurrent with the filing of the Petition for Forbearance, TracFone petitioned for designation as an ETC in New York. Shortly thereafter, TracFone petitioned for ETC designation in seven additional states. Those petitions were filed between July and November 2004.<sup>1</sup> TracFone's petitions for

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<sup>1</sup> See TracFone Wireless, Inc.'s Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, CC Docket No. 96-45, filed June 8, 2004; TracFone Wireless, Inc.'s Petition for Designation as an Eligible Telecommunications Carrier in the State of Florida, CC Docket No. 96-45, filed July 21, 2004; TracFone Wireless, Inc.'s Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, CC Docket No. 96-45,

forbearance and for ETC designation were limited to seeking ETC designation only for federal universal service support to the Lifeline portion of the low-income program. TracFone has not sought ETC designation for the purpose of receiving high cost support and it has no intention of seeking high cost support.

Section 10(c) of the Act provides the Commission fifteen months to consider a petition for forbearance. On September 6, 2005, after taking the complete statutory period allowed, the Commission granted TracFone's Petition for Forbearance subject to certain conditions and directed TracFone to submit a compliance plan explaining how it would comply with each condition.<sup>2</sup> However, the Commission did not act on any of the pending petitions for designation as an ETC. Rather, the Commission stated that it would address TracFone's ETC petitions in subsequent orders.

On October 11, 2005, TracFone submitted a compliance plan which addressed each of the conditions imposed by the FCC's forbearance order. The compliance plan was subject to public comment, but only one entity, the United States Telecommunications Association ("USTA"), filed comments. USTA's comments did not relate to any of the conditions imposed on TracFone by the Commission when it granted TracFone's petition for forbearance nor did USTA oppose any aspect of TracFone's compliance plan.

TracFone's ETC petitions remain pending more than two years after TracFone filed its first ETC petition on June 8, 2004. On May 24, 2006, during a meeting with Chairman Kevin J. Martin and members of his staff, TracFone inquired about the status of the pending petitions and noted that it was anxious to introduce its Lifeline program to qualified low income consumers. By this letter, TracFone requests the Commission to consider its eight pending ETC petitions on an expedited basis.

The Lifeline program is substantially underutilized by eligible consumers. According to Commission data, only about one-third of households eligible for low-income assistance actually subscribe to the Lifeline program.<sup>3</sup> The Commission has acknowledged "the benefit of increasing

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filed July 21, 2004; TracFone Wireless, Inc.'s Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama, CC Docket No. 96-45, filed November 9, 2004; TracFone Wireless, Inc.'s Petition for Designation as an Eligible Telecommunications Carrier in the State of Connecticut, CC Docket No. 96-45, filed November 9, 2004; TracFone Wireless, Inc.'s Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Massachusetts, CC Docket No. 96-45, filed November 9, 2004; TracFone Wireless, Inc.'s Petition for Designation as an Eligible Telecommunications Carrier in the State of North Carolina; TracFone Wireless, Inc.'s Petition for Designation as an Eligible Telecommunications Carrier in the State of Tennessee, filed November 9, 2004.

<sup>2</sup> Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i), Order, 20 FCC Rcd 15095 (2006) ("Forbearance Order").

<sup>3</sup> Id. ¶ 24 (citing Lifeline and Link-Up, WC Docket No. 03-109, *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 8302, 8305, ¶ 1 and Appendix K at Table 1.B.)

eligible participation in the Lifeline program, furthering the statutory goal of providing access to low-income consumers.”<sup>4</sup> In July 2005, concerns about the underutilization of the Lifeline program led to the Commission and the National Association of Regulatory Utility Commissioners (NARUC) launching a federal-state governmental initiative called “Lifeline Across America.” The purpose of that initiative is to provide greater outreach efforts. Recently, the Commission, NARUC and the National Association of State Utility Consumer Advocates (NASUCA) issued a report listing some of the initiatives under consideration.<sup>5</sup>

The Commission’s grant of TracFone’s ETC petitions would facilitate the Commission’s goal of raising the Lifeline utilization rate and would achieve many of the goals of the Lifeline Across America initiative. While TracFone applauds the efforts of the working group, the real outreach efforts needed to increase Lifeline participation must come from ETCs. As TracFone has stated repeatedly since June 2004, it is prepared to undertake those efforts. In addition, qualified low income consumers would for the first time in many locations have the choice of wireline or wireless Lifeline service.

The Lifeline utilization rate in the majority of states for which TracFone has requested ETC designation is substantially lower than even the one-third national Lifeline participation rate by eligible consumers. In fact, in five of the eight states for which TracFone has requested ETC designation the Lifeline participation rate for eligible consumers is sixteen percent or less.<sup>6</sup> Indeed, Governor Jeb Bush of Florida, strongly encouraged the Commission to grant TracFone’s ETC petition because the federal Lifeline program is “vastly underutilized” in Florida. Governor Bush further noted TracFone “could significantly increase the level of Florida consumers’ participation in Lifeline” and “bring to Florida consumers the convenience, flexibility and security of Lifeline service.”<sup>7</sup>

As the Commission noted in its Forbearance Order, TracFone’s designation as an ETC would benefit consumers because TracFone “would be offering Lifeline-eligible consumers a choice of providers not available to such consumers today for accessing telecommunications services.”<sup>8</sup> The Commission further stated that TracFone’s “prepaid feature may be an attractive

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<sup>4</sup> Forbearance Order, ¶ 17.

<sup>5</sup> Report of the FCC/NARUC/NASUCA Working Group on Lifeline and Link-Up: “Lifeline Across America,” issued August 2006.

<sup>6</sup> The Lifeline utilization rates by eligible consumers in the states for which TracFone has filed ETC petitions are: Alabama - 8.5%; Connecticut - 30.7%; Florida - 13.5%; Massachusetts - 38.8%; New York - 31.2%; North Carolina - 16.1%; Tennessee - 6.4%; and Virginia - 6.6%. See Lifeline and Link-Up, WC Docket No. 03-109, *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 8302, Appendix K at Table 1.B.)

<sup>7</sup> Letter from Governor Jeb Bush to Chairman Michael K. Powell, CC Docket 96-45, November 9, 2004, attached to Letter from M. Brecher to M. Dortch, CC Docket No. 96-45, filed November 16, 2004.

<sup>8</sup> Forbearance Order, ¶ 15.

alternative for such consumers who need the mobility, security, and convenience of a wireless phone but who are concerned about usage charges or long-term contracts.”<sup>9</sup> The Commission concluded that grant of TracFone’s petition for forbearance “serves the public interest in that it should expand participation of qualifying consumers.”<sup>10</sup>

Grant of TracFone’s pending ETC petitions would be sensible public policy given that the percentage of households without telephone service has decreased from 95.5 percent in March 2003 to 92.9 percent in November 2005. As of November 2005, there were over 8.2 million households without telephones.<sup>11</sup> Moreover, households that do have telephones highly correlate with households comprised of low-income and minority individuals.<sup>12</sup> TracFone’s proposed prepaid wireless Lifeline service may be particularly attractive to low-income consumers who are largely precluded from wireless services because of high usage charges, long-term contract commitments, termination penalties and rigorous credit requirements. Grant of TracFone’s ETC’s petitions will increase Lifeline subscribership by making available an affordable wireless offering to consumers who do not currently subscribe to any telephone service, and by relieving the economic burden on those low income consumers who currently have service.

The Commission’s experience with the recently-concluded special Lifeline program for Hurricane Katrina victims is instructive. In October 2005, the Commission established a special Lifeline program to provide wireless telephone service to victims of Hurricane Katrina who were displaced from their homes and who had no other means of communication. Despite strict eligibility limitations and difficulties in locating and confirming customers’ eligibility, TracFone and other wireless providers participated in that program and delivered free service to tens of thousands of Katrina victims during the brief period of the program (the program expired June 1, 2006). TracFone itself provided Lifeline service to nearly 30,000 eligible consumers through the Katrina program. Indeed, as shown by the success of the Commission program to benefit the victims of Hurricane Katrina, low-income individuals have a need for and are interested in subscribing to prepaid wireless service. TracFone is anxious to obtain ETC designation so that it can begin to fulfill that need.

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<sup>9</sup> Id.

<sup>10</sup> Id. ¶ 24.

<sup>11</sup> Telephone Subscribership in the United States, Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission, released May 2006, Table 1.

<sup>12</sup> Id., Chart 4 and Table 4.

The Commission has recognized that the availability of TracFone's prepaid Lifeline service will encourage qualified consumers to subscribe to the Lifeline program. However, the Commission has not acted on TracFone's pending ETC petitions despite noting in the Forbearance Order, issued almost one year ago, that TracFone's designation as an ETC would benefit low-income consumers and help alleviate the extreme underutilization of the Lifeline program. TracFone cannot offer supported Lifeline services to consumers until it is designated as an ETC. Accordingly, TracFone respectfully requests that the Commission consider and grant its long-pending ETC petitions without further delay.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mitchell F. Brecher', with a long horizontal line extending to the right.

Mitchell F. Brecher  
Debra M. Mercer

cc: Chairman Kevin J. Martin  
Commissioner Michael J. Copps  
Commissioner Jonathan S. Adelstein  
Commissioner Deborah Taylor Tate  
Commissioner Robert M. McDowell  
Mr. Thomas Navin  
Ms. Carol Pomponio  
Mr. Mark Seifert  
Mr. Jeremy Marcus  
Ms. Julie Veach